

Service Date: April 11, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of)	UTILITY DIVISION
KMC Data, LLC and KMC Telecom V., Inc.,)	
For Notice of Election of)	DOCKET NO. D2005.1.8
Interconnection Agreement)	
Adopting the Interconnection Agreement of)	ORDER NO. 6638
Qwest Corporation and AT&T Communications)	
Pursuant to 47 U.S.C. §252(i))	

FINAL ORDER

Introduction and Procedural Background

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act)¹ was signed into law, ushering in a sweeping reform of the telecommunications industry that is intended to bring competition to the local exchange markets. The 1996 Act sets forth methods by which local competition may be encouraged in historically monopolistic local exchange markets. The 1996 Act requires companies like Qwest Corporation (Qwest) to negotiate agreements with new competitive entrants in their local exchange markets. 47 U.S.C. §§ 251 and 252.

2. On January 18, 2005 KMC Data LLC filed a Notice of Election of Interconnection Agreement pursuant to 47 U.S.C. §252(i). On January 20, 2005 KMC Telecom V, Inc., filed a Notice of Election of Interconnection Agreement pursuant to 47 U.S.C. §252(i). Both KMC entities notified the Montana Public Service Commission (Commission) of their adoption of the interconnection agreement between Qwest and AT&T Communications pursuant to 47 U.S.C. §252(i). The Commission treated the two filings as one docket, and assigned the filings PSC Docket No. D2005.1.18.

3. The Commission issued a Notice of Application, Notice of Opportunity to Comment, and Intervention and Comment deadline on February 7, 2005, giving public notice of the KMC entities Notice of Election and requesting comments on the KMC entities Notice.

4. On February 22, 2005 Qwest filed its comments and objection to the Notice of Election submitted by the KMC entities.

Applicable Law and Commission Decision

5. A state Commission's review of an interconnection agreement is governed by the standards set forth in 47 U.S.C. § 252(e)(2). The Notice of Election submitted for approval in this proceeding was not a negotiated agreement between Qwest and KMC, but rather is an attempt by the KMC entities to opt in to an interconnection agreement previously negotiated between Qwest and AT&T.

6. Section 252(i) of the Act requires local exchange carriers to make available to any other requesting carrier any interconnection agreement approved by a state commission, upon the same terms and conditions as those provided in the agreement. 47 U.S.C. §252(i).

7. In its filings, the KMC entities simply elect to receive interconnection services in accordance with the terms of the interconnection agreement between Qwest and AT&T, without having negotiated those terms and conditions with Qwest.

8. Qwest objects to KMC's unilateral adoption of the Qwest and AT&T interconnection agreement without any negotiations between Qwest and KMC. Qwest objects to the KMC filings on the basis that the filings are not the result of negotiation or arbitration.

9. The KMC entities attempt to opt in to an existing interconnection agreement without separately negotiating an agreement with Qwest is rejected. The KMC entities may avail themselves of the procedural mechanisms contained in the Act at 47 U.S.C. §§251 and 252. The Commission rejects the KMC entities attempt to force Qwest into a unilateral interconnection agreement without negotiating the terms and conditions of the agreement pursuant to 47 U.S.C. §251 and §252. KMC is not precluded by this Order from pursuing other avenues of interconnection with Qwest, including arbitration, negotiation and mediation, as contemplated by the Act.

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.).

Conclusions of Law

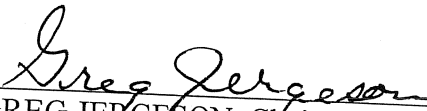
1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Qwest is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.
2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.
3. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. *See generally*, the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (*amending scattered sections of the Communications Act of 1934*, 47 U.S.C. §§ 151, *et seq.*). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.
4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

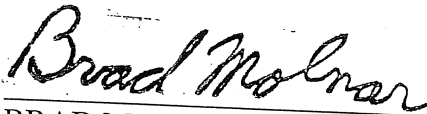
Order

THEREFORE, based upon the foregoing, it is ORDERED that the Notice of Election of Interconnection Agreement filed by the KMC entities on January 18 and January 20 of 2005 is rejected.

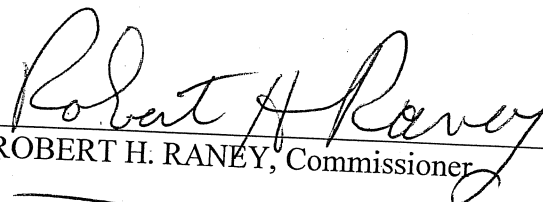
DONE AND DATED this 15th day of March 2005, by a vote of 5 to 0.

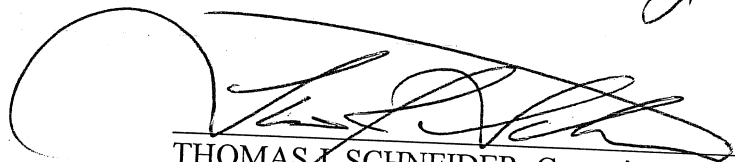
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


GREG JERGESON, Chairman

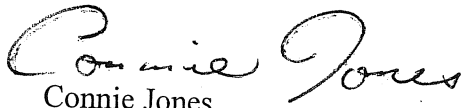

BRAD MOLNAR, Vice Chairman


DOUG MOOD, Commissioner


ROBERT H. RANEY, Commissioner


THOMAS J. SCHNEIDER, Commissioner

ATTEST:


Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.